



Why competition legislation?

Presentation to the Jamaica Chamber of Commerce

by

Swee Chua (Senior Economist, FTC)

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Allow me to start my presentation with a question. What, in your opinion is the most positive development in the Jamaican business environment in recent years? In my opinion, the liberalization of the Jamaican telecommunications industry and the entry of Digicel into the mobile phone market have had a tremendous impact. With Digicel's entry, there has been greater consumer choice; Cable & Wireless Jamaica (CWJ) has been forced to improve their customer service; and coverage has also increased. Recently there was a letter to *The Observer* from the chief of the maroons in Maroon Town, thanking Digicel for its presence – even Maroon Town today has mobile phone coverage! This has had a tremendous impact on Jamaica, especially with the lack of landline facilities in rural areas. The benefits of liberalizing the telecommunications sector are reflected in the enthusiastic response of Jamaicans to the entry of the new players – first Digicel and now Centennial.

A question to ask is, what made Digicel's successful entry possible? Digicel's success was made possible by, amongst other factors, provisions in the Telecommunications Act that prohibit a particular type of abuse of dominance by the incumbent. Would you have bought your Digicel phone if you could call only other Digicel phones with it, and not CWJ phones? I certainly would not have. In order for me to be able to call a CWJ mobile or landline number with my Digicel phone, it was necessary for Digicel to be interconnected to CWJ's network.

Under the Telecommunications Act, CWJ is forced to offer interconnection to Digicel and any other carrier. Without this provision, CWJ could certainly have abused its dominant position in the market with impunity and refused interconnection to new entrants. By doing this, it would have been able to kill any possibility of effective competition and maintained its monopoly grip on the industry. Without access to CWJ's

existing network of customers, Digicel would not have been able to attract its own customer base.

Imagine if the same competitive environment existed in the supply of electricity. Why is it that we continue to suffer the high costs, frequent power outages and poor customer service of Jamaica Public Service Company Ltd. (JPS)? Because we have no alternatives to turn to. Why does JPS not seem to be in a hurry to improve? Because there is no pressure for improvement. JPS is not about to lose its customers, even with poor service, because there is no competition. Is the situation likely to change in the near future? No, because the government has granted JPS a monopoly of the market and total exemption from the Fair Competition Act (FCA). In other words, government has eliminated the possibility of competition. Even if the electricity market were to be liberalized in future, for example, if new generation and electricity retail companies were to be allowed in (similar to the UK model), without provisions guarding against anti-competitive behaviour by JPS, effective competition would not be achieved. JPS could, for example, restrict access to its distribution network, thus making it practically impossible for any new entrants to operate successfully.

These two stark examples show us why competition is important. The following examples show the benefits of competition in terms of price reductions:

- Following the liberalization of the telecommunications market in Jamaica, CWJ's retail internet flat rate service price has fallen by 20% and its wholesale dedicated internet access has fallen by 15%;
- In the liberalized electricity market in the UK, wholesale (pool) prices of electricity fell 17% in real terms between 1994/1995 and 1999/2000;¹
- In the liberalized mobile telephony market in the UK, prices of outgoing calls from mobile have been decreasing at an annual rate of approximately 17% since 1998.²

It is worthwhile pointing out that both the electricity and telecommunications sectors in the UK are subject to competition law in addition to sector-specific regulation.

The bottom line is that competition is beneficial to consumers as well as to businesses such as those of the members of Jamaican Chamber of Commerce (JCC). Businesses benefit as competition in the supply of their inputs leads to lower costs for them. In the end, the whole economy benefits as competition leads to innovation and encourages growth.

What is the FCA about? The FCA is about protecting competition. I find it conceptually useful to think that the FCA is to businesses what rules are to sports. The aim in any sport is to win and to be the champion. To ensure that the best wins, there are rules. Indeed, when you first play a game, the first thing that you would learn is the rules. The best can be selected only if there are rules to ensure fair play. Runners in a race have to start at the

¹ See Competition Commission (2000), AES and British Energy: A report on references made under Section 12 of the Electricity Act 1989, December. (<http://www.ofgem.gov.uk/docs2001/compcomm1.pdf>)

² Average retail revenue per minute of outgoing mobile calls. Price decreases of 22.45%, 15.39% and 14.30% between 1998/99, 1999/2000 and 2000/01 respectively. See OFTEL (2001), Effective Competition Review: Mobile (February), pg. 75.

same time and run the same distance; athletes are not allowed to take steroids; foul play is forbidden in all sports; and team sports have the same number of players on each side.

Similarly, the aim in business is to be better than the competitors; win large market shares; and make the highest profits possible. The best businesses survive while inefficient ones die. The Act ensures fair play among businesses as they fiercely compete against one another. “Foul play” such as anti-competitive and abusive behaviour is not allowed.

The FCA prohibits anti-competitive practices. It is, however, not always easy to define what an anti-competitive practice is. Broadly speaking, an anti-competitive practice is any practice that prevents businesses from competing fairly and fiercely with each other. They come in various forms. Agreements that foreclose channels of distribution and markets from competitors and raise competitors’ costs relative to one’s own, such that competition is lessened in the market, are anti-competitive. Agreements between potential competitors not to compete are also anti-competitive.

Whether or not a practice is anti-competitive depends on the likely effect on competition in the market. It is therefore highly case specific, as the effect on competition depends not only on the specific nature of the practice but also on other factors such as:

- how widespread the practice is in the market;
- the existence of alternative channels through which competitors may reach the consumers;
- the balance of market power between existing competitors; and
- the ease of entry into the market.

It would be extremely useful for businesses to understand the FCA as they would then be able to use it to protect themselves against unfair competition. What, for example, would you do if:

- next week, all the commercial banks (NCB, RBTT, BNS, and CIBC) more or less simultaneously announced an increase in banking fees – for deposits, withdrawals, etc? This would increase the cost of doing business.
- you are in the bread industry, and tomorrow, Jamaican Flour Mills, the sole supplier of flour in Jamaica, announced that it was going into the bread making business and would stop supplying flour to bakers? You could potentially import flour, but it attracts about a 20% duty.
- if you were trying to publish and distribute a new school text book and found that one big publisher has an arrangement with almost all the bookstores such that it provides the shelves to the bookstores on the condition that only its books can be displayed on these shelves.

What would you do in the above scenarios? With the existence of the FCA, you could use the provisions under the FCA to protect yourself. You could use either your private right of action and pursue the matter directly in court or take the matter to the Fair Trading Commission. If there no competition legislation, however, your options would be severely limited and your business would likely suffer.